

June 30, 2017

FASANYA saying that  
incarceration is the only<sup>1</sup>  
way to force payment of attorney  
fees.

1 FAMILY COURT OF THE STATE OF NEW YORK  
CITY OF NEW YORK - COUNTY OF NEW YORK

2 -----x

3 In the Matter of a Proceeding for  
4 the Custody and/or Visitation of  
Minors Under Article Six of the  
Family Court Act

5 MANUEL ASENSIO,  
6 EMILIE BOSAK,

Petitioners,

Docket NO.:  
V-43839-13/13A

7 -against-

8 EMILIE BOSAK,  
9 MANUEL ASENSIO,

Respondents.

10 -----x

11 Held: June 30, 2017  
60 Lafayette Street  
New York, New York 10013

12 Before: Hon. ADETOKUNBO O. FASANYA, Judge  
13 Family Court of the State of New York

14  
15 Appearances:

16 CARMEN RESTIVO, Esq.  
Attorney for the child

17  
18 Also Present:

19 Hatun Aytug, Manuel Asensio's significant other

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21 Charlene Fountaliotis-Squires  
22 Official Court Reporter

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1       that were received were due to the dilatory -- dilatory  
2       tactics of Mr. Asensio, the respondent.    The multiple  
3       interim appeals filed by the respondent, which are his  
4       right, but which he cannot then deny the attorney for the  
5       child payment for her appearances and her performance, which  
6       are necessitated because she is appointed to represent the  
7       child and the child is a necessary party to those appeals.  
8       And also due to the multiple applications filed by  
9       respondent, both in this court and in the Appellate  
10      Division, all of which require the time and input of the  
11      attorney for the child.

12                It is clear to this court that a money judgment  
13      would be ineffectual in ensuring payment of the fees owed,  
14      because what it appears to this court is that Mr. Asensio  
15      has arranged his finances in such a way as to make it  
16      difficult to ascertain what his actual financial situation  
17      is and difficult to enforce a money judgment.

18                In light of all of that, this court is finding the  
19      respondent in contempt of this court's order appointing the  
20      attorney for the child and directing the payment for the  
21      attorney for the child.   This court is finding respondent in  
22      contempt for his willful, knowing and contumacious refusal  
23      to comply with the orders of this court regarding the  
24      payment of the attorney for the child's fees, despite being  
25      possessed of the means to do so.

1           This court has always indicated that it is not the  
2           wish of this court to find Mr. Asensio in contempt.   This  
3           court has always indicated that this court does not wish to  
4           punish Mr. Asensio for anything at all, other than just to  
5           ensure that the orders of this court are complied with and  
6           that the proceedings and the process are respected.   That  
7           continues to be the position of the court.   However, one  
8           cannot permit the current set of circumstances to continue  
9           without remedy.

10           This court has found Mr. Asensio in contempt.

11           We will go off the record for a brief period.

12           Thank you.

13           MANUEL PEDRO ASENSIO-GARCIA: I'm sorry, I didn't  
14           hear the last part, your Honor.

15           THE COURT: We will go off the record for a brief  
16           period.

17           Thank you.

18           (Off the record.)

19           (Back on the record.)

20           THE COURT: Back on the record.

21           Mr. Asensio, I just found you to be in contempt for  
22           failing to comply with my orders.   This matter is going to  
23           move to the penalty phase of the contempt proceedings, Mr.  
24           Asensio.

25           MANUEL PEDRO ASENSIO-GARCIA: May I have an

1 opportunity to address the court after what it said?

2 THE COURT: I'm going to give you an opportunity to  
3 do that.

4 MANUEL PEDRO ASENSIO-GARCIA: Thank you, your Honor.

5 THE COURT: Go ahead.

6 MANUEL PEDRO ASENSIO-GARCIA: Your Honor, I'm  
7 embarrassed and deeply hurt by your assessment of my  
8 credibility. A human being in this country, a citizen is  
9 entitled to arrange its finances as he sees fit under the  
10 law, I have done that and I live according to my  
11 disclosures, which are on file here, your Honor. Nothing  
12 you heard from the attorney for the child contradicts any  
13 financial disclosures that I have made. I'm sorry, that it  
14 is difficult for you to assess it, but I live my life in  
15 accordance to the financial disclosures that I made to this  
16 court on its official statements. I know the court doesn't  
17 want to believe that and that's why I addressed the court's  
18 mind in what the Judiciary Law says. I can't help my  
19 financial circumstances. I can't take ownership of  
20 anything that is not mine. I can't -- I can't assess  
21 anything that is not mine and sell it and take money and  
22 give it to the attorney for the child.

23 And I have asked the court to allow me to withdraw  
24 going back to April 20, 2015 and on November 2015 and  
25 November 2016, the court said that I was free to withdraw,

1       that no applications were pending against me, that I was  
2       permitted to withdraw the petition and that I had no  
3       applications pending against me.

4               THE COURT: Mr. Asensio --

5               MANUEL PEDRO ASENSIO-GARCIA: One more thing --

6               THE COURT: Mr. Asensio --

7               MANUEL PEDRO ASENSIO-GARCIA: -- you said you would  
8       not --

9               THE COURT: Mr. Asensio --

10              MANUEL PEDRO ASENSIO-GARCIA: -- compel me -- I  
11       don't want to be here, your Honor. I would like not to be  
12       here. And you could -- I will accept anything you want to  
13       do with my child. And I will -- I have offered the mother  
14       the opportunity to present to me a stipulation that I will  
15       agree to.

16              THE COURT: Please listen to me.

17              MANUEL PEDRO ASENSIO-GARCIA: Yes.

18              THE COURT: I want you to address yourself to what  
19       I indicated just now is the penalty phase of the proceedings  
20       as to why I should not impose a penalty at this point having  
21       found you in contempt. Making statements about past prior  
22       proceedings, making statements as to what may have been said  
23       or done in the past, does not address that. What I need  
24       you to do is to address now what you believe -- why you  
25       believe I should not impose a penalty after having found you